Supreme Court, U.S.
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No. 00-455

In The

Supreme Court of the United States

WILLIAM ACKER and U. W. CLEMON,

Petitioners,

v.

JEFFERSON COUNTY, ALABAMA,

Respondent.

On Petition For Writ Of Certiorari To The United States Court Of Appeals For The Eleventh Circuit

JEFFERSON COUNTY, ALABAMA'S BRIEF IN OPPOSITION

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QUESTION PRESENTED

1. Does the decision of the Eleventh Circuit in this case conflict with the decision of the Federal Circuit in *Hatter v. United States*, 99-1978?

PARTIES TO THE PROCEEDINGS BELOW AND CERTIFICATE OF INTERESTED PERSONS

Petitioners
William Acker
U. W. Clemon

Petitioners' Counsel
Irwin Stolz
Seaton Purdom

Respondent
Jefferson County, Alabama

Respondent's Counsel
Jeffrey M. Sewell

Trial Judge
Honorable Charles A. Moye, Jr.,
Senior United States District Judge

A Panel of the Eleventh
Circuit Court of Appeals
Hon. Ed Carnes
Hon. Rosemary Barkett
Hon. Charles Wilson

No other persons are known to have participated directly or indirectly in the appeal of this matter.

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CITATIONS OF THE OPINIONS AND JUDGMENTS ENTERED IN THE COURTS BELOW

Respondent adopts Petitioners' citations of the opinions and orders entered by the courts below.

STATEMENT FOR BASIS OF JURISDICTION

Respondent adopts Petitioners' statement of jurisdiction.

STATEMENT OF CONSTITUTIONAL PROVISIONS, STATUTES AND ORDINANCES INVOLVED IN THE CASE

Each of the following are reproduced in the Appendix to this brief:

Article III, United States Constitution.

Public Salary Tax Act, 4 U.S.C. § 111.

Buck Act, 4 U.S.C. § 106-110.

5 U.S.C. § 5520.

31 C.F.R. § 215.2.

Alabama Act 67-406.

Jefferson County Ordinance 1120.

STATEMENT OF THE CASE

(I) Nature of Case, Course of Proceedings and Disposition.

William Acker and U. W. Clemon are Article III judges in the Northern District of Alabama. They refused to pay the County's occupational tax which was authorized by Alabama Act 406 (1967) [hereafter "Act 406"] and implemented by County Ordinance 1120, effective January 1, 1988. The occupational tax is levied at the rate of one-half of one percent (.5% or .005) on the gross receipts earned in the geographic boundary of the County. Individuals who are required to purchase a state business license pursuant to the state business license code codified at § 40-12-1 *et seq.*, Ala. Code (1975) are exempted from the occupational tax. The occupational tax is collected from hundreds of thousands of persons who work in the county including federal, state and local government employees. From its inception in 1988 until June, 1999, the occupational tax was collected from approximately 92% of the individuals who earn wages in the County with the other 8% being required by state law to purchase a state business license. In June, 1999, the County began collecting the tax from 100% of its wage earners pursuant to a state trial court order in *Richards v. Jefferson County*, Case No. CV 92-3191. That trial court declared the exemption in Act 67-406 to be unconstitutional and severed it from the Act thereby expanding the tax base to 100% of the wage earners in the County.

Upon the judges' refusal to pay the tax, the County filed a collection suit against them in the state small claims court. The judges removed the cases to the United

States District Court for the Northern District of Alabama. The cases were consolidated and specially assigned to the Honorable Charles A. Moye, Jr., Senior District Judge, from the State of Georgia. As the case involved only questions of law and the material facts were undisputed, it was submitted to the trial court on stipulated facts and cross motions for summary judgment. The trial court entered a final order denying the County's motion for summary judgment and granting the judges' motions for summary judgment. The trial court held that, as applied to federal judges, the County occupational tax is a "franchise tax imposed upon the federal judiciary operations and is unconstitutional as a direct tax upon an officer and instrumentality of the United States, that is, upon the sovereign itself." 800 F.Supp. at 1545, 46. The trial court also held that the County occupational tax "constitutes an unconstitutional diminution of the defendants' compensation and is invalid as to them." 805 F.Supp. at 1548.

The County appealed. The case was assigned to a panel of the Eleventh Circuit Court of Appeals. After briefing and oral argument the panel reversed the trial court and held the levy of the tax on the judges' compensation did not violate the supremacy clause or the compensation clause of the United States Constitution and remanded the case for determination of the amount of tax owed. 61 F.3d 848.

The Court of Appeals granted en banc rehearing. 73 F.3d 1066. After rebriefing and oral argument, the divided Court of Appeals held that a County tax on federal judges is a direct tax on the federal government in violation of the intergovernmental tax immunity doctrine. 92 F.3d

1561. The Court of Appeals declined to reach the compensation clause issue.

The County filed a petition for certiorari (Case No. 98-10). This Court granted the petition, vacated the Court of Appeals decision and remanded the case for consideration of jurisdiction in light of *Arkansas v. Farm Credit Services*, 520 U.S. 821 (1997). After rebriefing and without oral argument, the Court of Appeals entered a supplemental opinion holding that the judges may utilize the judicial exception to the Tax Injunction Act notwithstanding the absence of the United States as a party. Having found federal jurisdiction, the Court of Appeals reinstated its prior en banc opinion, this time with an additional dissenting judge. The County again petitioned for certiorari. This Court granted certiorari (Case Number 98-10) on December 7, 1998, the case was argued on March 29, 1999, and this Court's opinion was released on June 21, 1999. 527 U.S. 423 (1999). This Court held that the County occupational tax did not violate the doctrine of intergovernmental tax immunity. This Court reversed the Court of Appeals and remanded the case for further consideration of the compensation clause issue.

Upon return to the Eleventh Circuit the case was assigned to a panel. The sole remaining issue was whether the County occupational tax constitutes an unconstitutional diminution of the compensation of judges. After briefing and oral argument, the panel held that the County occupational tax did not violate the compensation clause. 210 F.3d 1317 (2000). The Court of Appeals denied Petitioners' request for rehearing and en banc rehearing. The judges' petition for certiorari followed.

(II) Stipulated Facts

The undisputed material facts were stipulated by the parties when the case was before the district court. They are as follows:

1. Alabama Act 406 (1967) authorizes Jefferson County, Alabama, to impose a privilege, license or occupational tax upon all persons engaged in any vocation, occupation, calling or profession who are not required by state law to pay a privilege, license or occupational tax to the State of Alabama.

2. In 1987, the Jefferson County Commission, the governing body of the county, enacted Ordinance 1120, which imposes a privilege, license or occupational tax upon all persons engaged in any vocation, occupation, calling or profession within the county not required by state law to pay a privilege, license or occupational tax to the state.

Section 2 of Jefferson County Ordinance No. 1120 provides:

> [i]t shall be unlawful for any person to engage in or follow any vocation, occupation, calling or profession . . . within the county . . . without paying license fees for the privilege of engaging in or following such vocation, occupation, calling or profession . . .

Section 1, Definitions, subsection (C), provides:

> [t]he words "vocation, occupation, calling and profession" shall also mean and include the holding of any kind of office or position either by election or appointment, by any federal,

> state, county or city officer or employee where the services of such official or employee are rendered within Jefferson County, Alabama.

3. The effective date of the ordinance was January 1, 1988. The county occupational tax is measured at the rate of one-half of one percent (.005) of the gross receipts earned within the geographic boundary of Jefferson County, Alabama.

4. At all times since January 1, 1988, defendants have been employed by the United States of America as District Judges for the Northern District of Alabama pursuant to Article III of the Constitution of the United States.

5. The Northern District of Alabama is composed of 31 counties, including Jefferson County.

6. Defendants maintained their principal offices at the Hugo Black Federal Courthouse in the city of Birmingham, Jefferson County, Alabama.

7. Defendants routinely perform some but not all of their duties outside of Jefferson County, Alabama.

8. Ordinance No. 1120, section 3, provides:

> [i]n cases where compensation is earned as a result of work done or services performed both within and without the County, the license fees required under this Ordinance shall be computed by determining upon the oath of the employer, or if required by the Director of Revenue upon the oath of the employee, that percentage of the compensation earned from the proportion of the work which was done or performed within the County.

Since the effective date, neither the Administrative Office of the United States Courts nor any Article III judge in the Northern District of Alabama, has ever made an oath certifying the alleged amounts of a federal judge's salary earned within and without Jefferson County.

9. Defendants are not required by any state law to pay any privilege, license or occupational tax to the State of Alabama. Defendants, however, still pay their dues (one-half of the dues of a licensed practicing attorney) to the Alabama State Bar, which is an integrated bar, and, as such, is an arm or agency of the State of Alabama. Although defendants are not and cannot be licensed to practice law, they remain sustaining or auxiliary members of the bar as they still pay their dues.

10. The Administrative Office of the United States Courts has never withheld county occupational tax from any federal judge or court employee pursuant to the provisions of Ordinance No. 1120.

11. All active judges of the Northern District of Alabama except defendants have paid the county occupational tax on differing percentages of their judicial salaries to Jefferson County without supporting those percentages by an oath or by any formal accounting procedure. At least one Article III judge (not a defendant) has paid "under protest".

12. All State District and Circuit Court Judges of the Tenth Judicial Circuit of Alabama have paid the county occupational tax. The three Alabama Supreme Court Justices with satellite offices in Jefferson County have paid the county occupational tax based on portions of their salaries.

13. The Honorable Robert S. Vance, United States Circuit Judge, who served on the Court of Appeals for the Eleventh Circuit, and who, from January 1, 1988 until his death, had chambers in Jefferson County, Alabama, where he resided and spent most of his time, never paid the county occupational tax.

14. Since 1970, the city of Birmingham, Alabama, has imposed an occupational tax at the rate of one percent of gross receipts (twice the rate of the county tax) on persons engaged in any vocation, occupation, calling or profession within the city.

15. All active judges of the Northern District of Alabama except defendant Acker have paid the city occupational tax.

16. Defendant Clemon has paid the City Occupational Tax on approximately 66 percent of his gross earnings during his entire tenure as a United States District Judge.

17. Since 1962, the City of Gadsden, Alabama, where defendant Acker has regularly held court for the last 11 years, has had an occupational tax ordinance similar to the county occupational tax, except that it contains no exemptions. The Gadsden ordinance provides in pertinent part:

> [i]t shall be unlawful for any person to engage in or follow any trade, occupation or profession, as defined in this article, within the city on and after the first day of February, 1962, without paying license fees for the privilege of engaging in or following such trade, occupation or profession, which license fees shall be measured by

two (2) per cent of the gross receipts of each such person.

Gadsden, City Code, Section 7-51.

18. The city of Gadsden has made no effort to exact or to collect a license fee from any of the several Article III judges who, regularly, have sat in the Middle Division of the Northern District of Alabama, which has its courthouse in the city of Gadsden.

19. Defendants have paid their Alabama state income taxes throughout their tenures as federal judges.

20. A final decree entered by defendant Acker as an Article III judge after January 1, 1988, has been formally attacked under Rule 60(b), Fed.R.Civ.P., as having been "unlawfully" entered because said order was entered by defendant Acker when he had not paid his license fee to Jefferson County pursuant to Ordinance No. 1120.

ARGUMENT

A. REASONS FOR NOT GRANTING THE PETITION FOR CERTIORARI

There are two primary reasons why the petition should not be granted.

First, the decisions in this case and *Hatter v. United States*, 99-1978, are not in conflict because they involve different parties, taxes and issues. As example, there was no issue in *Hatter* about whether the compensation clause applied to a County. That issue is present in this case. It is the County's position that the compensation clause is a limitation only on the power of Congress, not a state or

county. The judges have never cited a case from any court that supports their contention that the drafters of the compensation clause intended that it apply to a county. As further example of the differences in the two cases, the *Hatter* court determined that *Evans v. Gore* directly controlled that case. That was because the judges in *Hatter* were appointed *before* Congress put the federal judiciary on notice it was subject to FICA tax. In this case the evidence was undisputed that these judges were appointed *more than 40 years after* Congress put the federal judiciary on notice it was subject to local occupational tax. The Public Salary Tax Act of 1937, 4 U.S.C. § 111; followed by the Buck Act of 1939, 4 U.S.C. § 106-110; followed by 5 U.S.C. § 5520[1] provided notice to the federal judiciary that it was subject to County occupational tax. It follows that any judge who took office after 1937 had notice of and is subject to all subsequent local tax whenever imposed just like all other federal employees. Otherwise, the Public Salary Tax Act, the Buck Act and 5 U.S.C. § 5520 have no prospective field of operation for judges. There is nothing in the statutes' legislative histories which suggests that Congress intended that result. Since the evidence was undisputed that the judges in this case were appointed more than 40 years after enactment of the Public Salary Tax Act and more than 13 years after Alabama authorized the County to levy this tax, the Eleventh Circuit correctly concluded that *Evans v. Gore* did not control and would have to be *extended* to apply to this case. The Eleventh Circuit chose not to extend *Evans v. Gore*. As additional example of the differences in the

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[1] Each statute is included in the Appendix to this brief.

two cases, *Hatter* did not involve the relationship, if any, between the compensation clause and the Public Salary Tax Act, the Buck Act or 5 U.S.C. § 5520. In this case these judges have, in effect, contended and the district court, in effect, concluded that these statutes violate the compensation clause and are therefore unconstitutional as applied to judges. If that is correct then these statutes in which Congress consented to the state and local taxation of the compensation of federal officers and employees have no field of operation for judges.

Second, the petition for certiorari should not be granted in this case because the *Hatter* case is the appropriate case to grant certiorari and overrule *Evans v. Gore*, 253 U.S. 245 (1920). The County agrees that *Evans v. Gore* should be overruled for all of the reasons set forth in the United States petition for certiorari in *Hatter*. But, that should happen in a case where *Evans v. Gore* was applied. *Evans v. Gore* was not applied in this case. The County urges the Court to grant certiorari in *Hatter v. United States* and overrule *Evans v. Gore* in that case.

B. ISSUE RAISED IN THE PETITION THAT IS NOT PROPERLY BEFORE THE COURT

The petition asserts that the judges should not have to pay a tax that contains exemptions. If the petition is granted that issue should not be considered by the Court for several reasons.

First, the judges have never raised that issue before any of the lower courts. It should not be heard for the first time by the Supreme Court.

Second, it is the same issue, dressed up slightly differently, that the judges raised before this Court in case number 98-10, that the exemptions equate to discrimination against judges. This Court has already heard and rejected that argument. (*See* Section IV, Part C of the Court's opinion in case number 98-10, 527 U.S. at 442). The law of the case doctrine should preclude the Court's reconsideration of the same issue dressed up differently. *See Agostini v. Felton*, 521 U.S. 203, 236 (1997) ("Court should not reopen issues decided in earlier stages of the same litigation.").

Third, the issue is moot because in June, 1999 the County began collecting the tax from 100% of its wage earners pursuant to an order of a state trial court in *Richards v. Jefferson County*. That trial court found unconstitutional the portion of Act 67-406 which exempted individuals required by state law to purchase a state license. The trial court severed that portion from the rest of Act 67-406 and ordered the County to collect the tax from all individuals who earn wages in the County. The County implemented that order in June, 1999 and continues to collect the tax from all individuals who work in

the County.[2] Except for these federal judges, everyone who works in the County now pays the tax.

CONCLUSION

The petition for a writ of certiorari should be denied because there is no conflict between the Eleventh and Federal Circuits. The United States' petition for certiorari in *Hatter v. United States* should be granted for the purpose of overruling *Evans v. Gore*.

Respectfully submitted,

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[2] Prior to June, 1999 the tax had been collected from 92% of the wage earners in the County with the other 8% being those individuals required by state law to purchase a state license and therefore being exempt from the County tax. (The Court may recall this being discussed at the oral argument of Case 98-10. *See* footnote 12 of the Court's opinion, 527 U.S. at 442). The County submits upon information and belief that more than 8% of the wage earners in the United States do not pay any federal income tax. The judges' argument leads to the conclusion that the federal income tax is not a "general tax" therefore judges would be exempt from it as well. This Court long ago rejected that argument. *See O'Malley v. Woodrough*, 307 U S. 277 (1939). It should not be revisited in this case.

ARTICLE III.

Section 1.

[Judicial Power, Tenure of Office]

The judicial power of the United States, shall be vested in one supreme court, and in such inferior courts as the congress may from time to time ordain and establish. The judges, both of the supreme and inferior courts, shall hold their offices during good behavior, and shall, at stated times, receive for their services, a compensation, which shall not be diminished during their continuance in office.

§ 111. Same; taxation affecting Federal employees; income tax

The United States consents to the taxation of pay or compensation for personal service as an officer or employee of the United States, a territory or possession or political subdivision thereof, the government of the District of Columbia, or an agency or instrumentality of one or more of the foregoing, by a duly constituted taxing authority having jurisdiction, if the taxation does not discriminate against the officer or employee because of the source of the pay or compensation.

§ 106. Same; income tax

(a) No person shall be relieved from liability for any income tax levied by any State, or by any duly constituted taxing authority therein, having jurisdiction to levy such a tax, by reason of his residing within a Federal area or receiving income from transactions occurring or services performed in such area; and such State or taxing authority shall have full jurisdiction and power to levy and collect such tax in any Federal area within such State to the same extent and with the same effect as though such area was not a Federal area.

(b) The provisions of subsection (a) shall be applicable only with respect to income or receipts received after December 31, 1940.

* * *

§ 110. Same; definitions

As used in sections 105-109 of this title –

(a) The term "person" shall have the meaning assigned to it in section 3797 of title 26.

(b) The term "sales or use tax" means any tax levied on, with respect to, or measured by, sales, receipts from sales, purchases, storage, or use of tangible personal property, except a tax with respect to which the provisions of section 104 of this title are applicable.

(c) The term "income tax" means any tax levied on, with respect to, or measured by, net income, gross income, or gross receipts.

(d) The term "State" includes any Territory or possession of the United States.

(e) The term "Federal area" means any lands or premises held or acquired by or for the use of the United States or any department, establishment, or agency of the United States; and any Federal area, or any part thereof, which is located within the exterior boundaries of any State, shall be deemed to be a Federal area located within such State.

(July 30, 1947, c. 389, 61 Stat. 645.)

§ 5520. Withholding of city or county income or employment taxes

(a) When a city or county ordinance –

(1) provides for the collection of a tax by imposing on employers generally the duty of withholding sums from the pay of employees and making returns of the sums to a designated city or county officer, department, or instrumentality; and

(2) imposes the duty to withhold generally on the payment of compensation earned within the jurisdiction of the city or county in the case of employees whose regular place of employment is within such jurisdiction;

the Secretary of the Treasury, under regulations prescribed by the President, shall enter into an agreement with the city or county within 120 days of a request for agreement by the proper city or county official. The agreement shall provide that the head of each agency of the United States shall comply with the requirements of the city or county ordinance in the case of any employee of the agency who is subject to the tax and (i) whose regular place of Federal employment is within the jurisdiction of the city or county with which the agreement is made or (ii) is a resident of such city or county. The agreement may not apply to pay for service as a member of the Armed Forces (other than service described in section 5517(d) of this title). The agreement may not permit withholding of a city or county tax from the pay of an employee who is not a resident of, or whose regular place of Federal employment is not within, the State in

which that city or county is located unless the employee consents to the withholding.

(b) This section does not give the consent of the United States to the application of an ordinance which imposes more burdensome requirements on the United States than on other employers or which subjects the United States or its employees to a penalty or liability because of this section. An agency of the United States may not accept pay from a city or county for services performed in withholding city or county income or employment taxes from the pay of employees of the agency.

(c) For the purpose of this section –

(1) "city" means any unit of general local government which –

(A) is classified as a municipality by the Bureau of the Census, or

(B) is a town or township which, in the determination of the Secretary of the Treasury –

(i) possesses powers and performs functions comparable to those associated with municipalities,

(ii) is closely settled, and

(iii) contains within its boundaries no incorporated places, as defined by the Bureau of the Census,

within the political boundaries of which 500 or more persons are regularly employed by all agencies of the Federal Government;

(2) "county" means any unit of local general government which is classified as a county by the Bureau of the Census and within the political boundaries of which 500 or more persons are regularly employed by all agencies of the Federal Government;

(3) "ordinance" means an ordinance, order, resolution, or similar instrument which is duly adopted and approved by a city or county in accordance with the constitution and statutes of the State in which it is located and which has the force of law within such city or county; and

(4) "agency" means –

(A) an Executive agency;

(B) the judicial branch; and

(C) the United States Postal Service.

Act No. 406 H. 832 – House, Cherner, Waggoner, Holman, Crane, Yeilding, Ellis, Adwell, Gloor, Jackson (T), Money, Bowers

AN ACT

To authorize the governing body of any county of the State having a population of 500,000 or more, according to the last or any subsequent Federal census, to levy a business or privilege tax upon any business, vocation, occupation, calling or profession for which a license or privilege tax is not required for either the State of Alabama or the county by the laws of the State of Alabama, and to limit the amount of any such business or privilege tax.

Be It Enacted by the Legislature of Alabama:

Section 1. This Act shall apply to any county of the State of Alabama having a population of 500,000 or more, according to the last or any subsequent federal census, and to no other county.

Section 2. As used in this Act, the following words and terms shall have the meanings hereby ascribed to them; "the county" means a county subject to this Act; "the governing body" means the governing body of the county, whether it be a county commission, board of revenue or other governing body; "person" includes any natural person, corporation, firm, association or other entity; and "business" includes business, vocation, occupation, calling or profession; "license or privilege tax" shall not include any sales or use tax.

Section 3. The purpose of this Act is to equalize the burden of taxation by authorizing the county to impose a license or privilege tax upon persons now engaging in certain businesses without paying any license tax thereon to either the state or county.

Section 4. The governing body of the county is hereby authorized to levy a license or privilege tax upon any person for engaging in any business, for which he is not required by law to pay any license or privilege tax to either the State of Alabama or the county by any of the following Article 1, Chapter 20, Title 51; Sections 176, 177, 178, 180, 182, 183, 184, 186, 429, and 826 in Title 51 of the Code of Alabama of 1940 as amended.

When a person is engaged in more than one business for one or more of which a license or privilege tax is required to be paid to the State or the county but for one or more of which no license or privilege tax is required to be paid to the State or county, the county governing body shall have the authority to levy a license or privilege tax upon that business, or those businesses, for engaging in which such person is not required to pay any license or privilege tax to the State or county.

Section 5. The tax hereby levied shall be paid to that officer or employee of the county chargeable with the duty of collecting license or privilege taxes payable to the county.

Section 6. No license or privilege tax levied by the governing body of the county on any person, for engaging in any business shall be at a rate which is in excess of the rate of license or privilege tax levied by the largest

municipality of the county on the same or similar type of business activity.

Section 7. It is hereby provided that all laws or parts of law in conflict with provisions of this Act are hereby repealed to the extent of such conflict.

Section 8. The provisions of this Act are severable; and should any part of this Act be declared unconstitutional or void, such declaration shall not affect the remaining provisions.

Section 9. This Act shall become effective upon its approval by the Governor or upon its otherwise becoming a law.

Approved September 7, 1967.

Time: 10:37 A.M.

OCCUPATIONAL TAX

of

JEFFERSON COUNTY

ALABAMA

Adopted by Ordinance Number 1120

of Jefferson County Commission

September 29, 1987

DAVID ORANGE, President

Jefferson County Commission

Commissioner of Finance & General Services

REUBEN DAVIS	JIM GUNTER
Commissioner Health &	Commissioner Community
Human Resources	& Economic Development
CHRIS McNAIR	DR. JOHN KATOPODIS
Commissioner	Commissioner Roads &
Environmental Services	Transportation

ORDINANCE NO. 1120

An Ordinance to establish a license or privilege tax on persons engaged in any vocation, occupation, calling or profession in Jefferson County who is not required by law to pay any license or privilege tax to either the State of Alabama or the County as set out herein.

BE IT RESOLVED AND ORDAINED by the Jefferson County Commission as follows:

Section 1. DEFINITIONS. That the following words, when used in this Ordinance, shall have the meaning

ascribed to them, except where the context clearly indicates or requires a different meaning.

(A) The word "person" shall mean any natural person. Whenever the word "person" is used in any clause prescribing and imposing a penalty in the nature of a fine or imprisonment, the work as applied to a partnership or other form of unincorporated enterprise shall mean the partners or members thereof, and as applied to corporations shall mean the officers and directors thereof.

(B) The words "vocation, occupation, calling and profession" shall mean and include the doing of any kind of work, the rendering of any kind of personal services, or the holding of any kind of position or job within Jefferson County, Alabama, by any clerk, laborer, tradesman, manager, official or other employee, including any non-resident of Jefferson County who is employed by any employer as defined in this section, where the relationship between the individual performing the services and the person for whom such services are rendered is, as to those services, the legal relationship of employer and employee, including also a partner of a firm or an officer of a firm or corporation, if such partner or officer receives a salary for his personal services rendered in the business of such firm or corporation, but they shall not mean or include domestic servants employed in private homes and shall not include businesses, professions or occupations for which license fees are required to be paid under any General License Code of the County or to the State of Alabama or the County by any of the following: Chapter 12, Article 2, Title 40; §§ 40-21-50, 40-21-52; 53, 54 and 55;

40-21-57, 58, 59, and 60; 40-16-6; and 27-4-9 of the Code of Ala. 1975, as amended.

(C) The words "vocation, occupation, calling and profession" shall also mean and include the holding of any kind of office or position either by election or appointment, by any federal, state, county or city officer or employee where the services of such official or employee are rendered within Jefferson County, Alabama.

(D) The word "employee" shall mean and include any person engaging in or following any vocation, occupation, calling or profession within the meaning of subsection (B) of Section 1 of this Resolution and Ordinance.

(E) The word "employer" shall mean and include any person, business, firm, corporation, partnership, association or any other kind of organization who or that employs any person in any vocation, occupation, calling or profession in Jefferson County, Alabama, within the meaning of subsection (B) of Section 1 of this Ordinance.

(F) The words "gross receipts" and "compensation" shall have the same meaning, and both words shall mean and include the total gross amount of all salaries, wages, commissions, bonuses or other money payment of any kind, or any other considerations having monetary value, which a person receives from or is entitled to receive from or be given credit for by his employer for any work done or personal services rendered in any vocation, occupation, calling or profession, including any kind of deductions before "take home" pay is received;

but the words "gross receipts" and "compensation" shall not mean or include amounts paid to traveling salesmen or other workers as allowance or reimbursement for traveling or other expenses incurred in the business of the employer, except to the extent of the excess of such amounts over such expenses actually incurred and accounted for by the employee to the employer.

(G) The word "licensee" shall mean and include any person required to file a return or to pay a license fee under this ordinance.

(H) The word "county" shall mean Jefferson County, Alabama.

(I) The words "Director of Revenue" shall mean the Director of Revenue of Jefferson County, Alabama.

(J) The singular shall include the plural and vice versa, and the masculine shall include the feminine and the neuter.

Section 2. LICENSE FEES REQUIRED. It shall be unlawful for any person to engage in or follow any vocation, occupation, calling or profession as defined in Section 1 within the County on and after the 1st day of January, 1988, without paying license fees to the County for the privilege of engaging in or following such vocation, occupation, calling or profession, which license fees shall be measured by one-half percent (1/2%) of the gross receipts of each such person.

Section 3. WHERE WORK DONE OR SERVICES PERFORMED BOTH WITHIN AND WITHOUT THE COUNTY. In cases where compensation is earned as a result of work done or services performed both within

and without the county, the license fees required under this Ordinance shall be computed by determining upon the oath of the employer, or if required by the Director of Revenue upon the oath of the employee, that percentage of the compensation earned from the proportion of the work which was done or performed within the County.

Section 4. EMPLOYERS TO WITHHOLD LICENSE FEES AND FILE RETURNS. Each employer shall deduct from each payment due each employee the amount of the license fees measured by one-half per centum (1/2%) of the compensation due each employee beginning on the 1st day of January, 1988. The payments required to be made on account of such deductions by employers shall be made monthly to the County for the monthly periods ending January 31, February 28, March 31, April 30, May 31, June 30, July 31, August 31, September 30, October 31, November 30 and December 31st of each year, on or before the twentieth day of the month next following the end of each such monthly period, and each employer shall at the same time make a return in connection therewith on a form made available to such employer by the Director of Revenue at the office of the Director of Revenue, provided that, if the total amount deducted from payments made to or due all employees of an employer is less than fifty ($50.00) dollars during each calendar month of the previous calendar year, then such employer may elect, for the current calendar year, to remit such deductions to the county for the quarterly periods ending March 31st, June 30th, September 30th and December 31st of such following calendar year, on or before the twentieth day of the month next following the end of each such quarterly period, and each such employer shall at

the same time make a return in connection therewith on a form made available to such employer by the Director of Revenue at the office of Director of Revenue. Provided, however, that the failure or omission by any employer to deduct such license fees shall not relieve an employee from the payment of such license fees and compliance with the requirements for making returns as provided in this Ordinance, or with any regulations promulgated under this Ordinance. Each employer shall file in the office of the Director of Revenue on or before January 31, of each year a return on a form made available by said Director of Revenue, at the office of said Director of Revenue, which return shall show the gross amount of compensation of each employee, the amount of license fees deducted and paid by such employer for all or any part of the preceding calendar year and the last known address of each such employee. Each employer shall keep accurate records of all such compensation, deductions, license fees, payments and returns. Such records shall be kept and maintained by each such employer for not less than five (5) years subsequent to the date such compensation was earned.

Section 5. RETURNS TO BE FILED BY EMPLOYEES. When a monthly or quarterly return, as required by Section 4 hereof is not filed by an employer and the license fees are not paid to the County by such employer monthly as herein provided, the employee for whom no return has been filed and no payment has been made shall file a return with the Director of Revenue on or before the 1st day of the second month next following the end of each such monthly or quarterly period, showing in said return his gross receipts subject to license fees

for such month or quarter, and he shall also file a return with the Director of Revenue on or before January 31st of each year thereafter in which his employer has failed to file any monthly or quarterly return required in the preceding calendar year, showing on said return the gross receipts subject to license fees during the preceding calendar year. If for any reason all license fees of a person subject to the provisions of this Ordinance were not withheld by his employer from his gross receipts, such person shall file each return required by this section on a form obtainable at the office of the Director of Revenue. In addition to the gross receipts earned by him, such return shall show such other pertinent information as may be required by the Director of Revenue. Each person making a return required by the Section shall, at the time of filing thereof, pay to the County the amount of license fees due under this Ordinance; provided, however, that any portion of the license fees deducted at the source shall be deducted on the return and only the balance, if any, shall be due and payable at the time of filing said return. Each employee shall keep accurate records of all such compensation, deductions, license fees, payments and returns. Such records shall be kept and maintained by each such employee for not less than five (5) years subsequent to the date such compensation was earned.

Section 6. DUTIES OF THE DIRECTOR OF REVENUE. It shall be the duty of the Director of Revenue to collect and receive all license fees imposed by this Ordinance and to keep records showing the amounts received by him from each employer. All moneys received by the Director of Revenue shall be deposited in a duly approved depository.

Section 7. INVESTIGATIVE POWERS OF THE DIRECTOR OF REVENUE. The Director of Revenue or any agent or employee designated by him is hereby authorized to examine the books, papers and records of any employer or supposed employer, or of any licensee or supposed licensee, in order to determine the accuracy of any return made, or if no return was made to ascertain the amount of license fees due under the terms of this Ordinance by such examination. Each such employer or supposed employer or licensee or supposed licensee shall give to the Director of Revenue, or to his duly authorized agent or employee, the means, facilities and opportunity for the making of such examination and investigation. The Director of Revenue is hereby authorized to examine any person under oath concerning any gross receipts which were or should have been shown in a return, and to this and he may compel the production of books, papers, records and the attendance of all persons before him, whether as parties or as witnesses, whom he believes to have knowledge of such gross receipts or compensation.

Section 8. REGULATIONS MAY BE PROMULGATED. The Director of Revenue may prescribe, adopt, promulgate and enforce reasonable rules and regulations not in conflict with this Ordinance relating to any matter or thing pertaining to the administration and enforcement of the provisions of this Ordinance, including but not limited to provisions for the re-examination and correction of returns as to which overpayment or underpayment is claimed or found to have been made, and the regulations so promulgated shall be binding upon all licensees and employers.

Section 9. INFORMATION TO BE CONFIDENTIAL. Notwithstanding any resolutions and ordinances to the contrary, any information gained by the Director of Revenue or any other official or agent or employee of the County as a result of any returns, investigations, hearings, or verifications required or authorized by this Ordinance shall be confidential, except for official purposes, or in accordance with proper judicial order, or the enforcement of this Ordinance, and any person or agent divulging such information, except as herein permitted, shall upon conviction be subject to a fine of not more than One Hundred Dollars ($100.00) or to imprisonment of not exceeding thirty (30) days, or to both such fine and imprisonment.

Section 10. INTEREST AND PENALTIES.

(A) All license fees imposed by this Ordinance which are delinquent, that is, which remain unpaid after they become due shall, subject to the provisions hereinafter set out, bear interest at the rate of twelve percentum (12%) per annum, and any person who has failed to pay such license fees when the same became due shall, subject to the provisions hereinafter set out, also be charged a penalty of ten percentum (10%) of the amount of such unpaid license fees. Any person or employer who fails or refuses to withhold any license fees payable under this Ordinance, or who fails to pay such fees after withholding the same to the County at the time it is due, as provided under the provisions of Section 4 hereof, shall become liable to the County for such fees, as well as for the interest thereon at the rate of twelve percentum (12%) per annum, and for the aforesaid penalty. Provided, however, that the minimum penalty imposed against such

person or employer shall be Three Dollars ($3.00). Provided the Director of Revenue, if a good and sufficient reason is shown for the failure to pay the tax within the time required, may waive or remit the penalty and interest, or a portion of either, upon payment of the tax due.

(B) Any person or employee who shall fail, neglect or refuse to pay a license fee as by this Ordinance required, or any employer who shall fail to withhold said license fees, or to pay over to County such license fees, penalties or interest imposed by this Ordinance, or any person required to file a return under the provisions of Section 5 of this Ordinance, who shall fail, neglect or refuse to file such return, or any person or employer who shall refuse to permit the Director of Revenue or any agent or employee designated by him, in writing, to examine his books, records and papers for any purpose authorized by this Ordinance, or who shall knowingly make any incomplete, false or fraudulent return, or who shall attempt to do anything whatever to avoid the full disclosure of the amount of gross receipts or compensation in order to avoid the payment of the whole or any part of a license fee, shall upon conviction be subject to punishment within the limits of and as provided by law for each offense. Such punishment shall be in addition to the penalties imposed under subsection (A) of this section.

Section 11. EXTENSION OF TIME FOR MAKING RETURN. The Director of Revenue, for good cause, may extend the time for making any return required under the provisions of this Ordinance, but the time for filing any such return shall not be extended for a greater period than thirty (30) days from the day such return is due to be

made and shall not prevent penalty and interest from accruing during the period of such extension.

Section 12. USE OF LICENSE FEES. All money derived from license fees under the provisions of this Ordinance shall be paid to the General Fund of the County and expended as authorized by law.

Section 13. SEVERABILITY. The provisions of this Ordinance are severable. If any provision, section, paragraph, sentence or part thereof, or the application thereof to any employer or licensee or class or persons, shall be held unconstitutional or invalid, such decision shall not affect or impair the remainder of the Ordinance, it being the legislative intent to ordain and enact each provision, section, paragraph, sentence and part thereof, separately and independently of each other.

Section 14. REPEAL OF RESOLUTION AND ORDINANCES. All resolutions and ordinances or parts of resolutions and ordinances in conflict with this Ordinance are to the extent of such conflict hereby repealed.

Section 15. EFFECTIVE DATE. This Ordinance shall be in full force and effect on and after January 1, 1988, and from year to year thereafter, until repealed.

31 C.F.R. § 215.2 Definitions.

As used in this part:

(a) "Agency" means each of the executive agencies and military departments (as defined in 5 U.S.C. 105 and 102, respectively) and the United States Postal Service; and in addition, for city or county withholding purposes only, all elements of the judicial branch.

(b) "City" means any unit of general local government.

(1) Which:

(A) Is classified as a municipality by the United States Bureau of the Census, or

(B) Is a town or township which, in the determination of the Secretary of the Treasury,

(i) Possesses powers and performs functions comparable to those associated with municipalities,

(ii) Is closely settled, and

(iii) Contains within its boundaries no incorporated places as defined by the United States Bureau of the Census; and

(2) Within the political boundaries of which five hundred or more persons are regularly employed by all agencies of the Federal Government.

(c) "City income or employment taxes" means any form of tax for which, under a city ordinance:

(1) Collection is provided by imposing on employers generally the duty of withholding sums from

the pay of employees and making returns of the sums to a designated city officer, department, or instrumentality; and

(2) The duty to withhold generally is imposed on the payment of compensation earned within the jurisdiction of the city in the case of employees whose regular place employment is within such jurisdiction. Whether the tax is described as an income, wage, payroll, earnings, occupational license, or otherwise, is immaterial.

(d) "Compensation" as applied to employees of an agency and members of the Armed Forces means "wages" as defined in 26 U.S.C. 3401(a) and regulations issued thereunder.

(e) "County" means any unit of local general Government which is classified as a county by the Bureau of the Census and within the political boundaries of which 500 or more persons are regularly employed by all agencies of the Federal Government.

(f) "County income or employment taxes" means any form of tax for which, under a county ordinance:

(1) Collection is provided by imposing on employers generally the duty of withholding sums from the pay of employees and making returns of the sums to a designated county officer, department, or instrumentality; and

(2) The duty to withhold generally is imposed on the payment of compensation earned within the jurisdiction of the county in the case of employees whose regular place of employment is within such jurisdiction. Whether

the tax is described as an income, wage, payroll, earnings, occupational license, or otherwise, is immaterial.

(g) "District of Columbia income tax" means the income tax imposed under 47 District of Columbia Code, Chapter 15, Subchapter II.

(h)(1) "Employees" for the purpose of State income tax withholding, means all employees of an agency, other than members of the armed forces. For city and county income or employment tax withholding, it means:

(i) Employees of an agency;

(ii) Members of the National Guard, participating in exercises or performing duty under 32 U.S.C. 502; or

(iii) Members of the Ready Reserve, participating in scheduled drills or training periods, or serving on active duty for training under 10 U.S.C. 270(a).

The term does not include retired personnel, pensioners, annuitants, or similar beneficiaries of the Federal Government, who are not performing active civilian service or persons receiving remuneration for services on a contract-fee basis.

(2) "Employees" for purposes of District of Columbia income tax withholding, means employees as defined in 47 District of Columbia Code 1551c(z).

(i) "Members of the Armed Forces" means all individuals in active duty status (as defined in 10 U.S.C. 101(22)) in regular and reserve components of the Army, Navy, Air Force, Marine Corps and Coast Guard, including members of the National Guard while participating in exercises or performing duty under 32 U.S.C. 502, and

members of the Ready Reserve while participating in scheduled drills or training periods or serving on active duty for training under 10 U.S.C. 270(a).

(j) "Ordinance" means an ordinance, order, resolution, or similar instrument which is duly adopted and approved by a city or county in accordance with the constitution and statutes of the state in which it is located and which has the force of law within such city or county.

(k) "Regular place of Federal employment" means the official duty station, or other place, where an employee actually and normally (i.e., other than in a travel or temporary duty status) performs services, irrespective of residence.

(l) "Secretary" means Secretary of the Treasury and Fiscal Assistant Secretary or his designee.

(m) "State" means a State of the United States or the District of Columbia, unless otherwise specified.

(n) "State income tax" means any form of tax for which, under a State status:

(1) Collection is provided, either by imposing on employers generally the duty of withholding sums from the compensation of employees and making returns of such sums of the State or by granting to employers generally the authority to withhold sums from the compensation of employees, if any employee voluntarily elects to have such sums withheld; and

(2) The duty to withhold generally is imposed, or the authority to withhold generally is granted, with respect to the compensation of employees who are residents of such State.